

BEFORE THE
STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

THOMAS L. BLAKE
11847 South Street
Cerritos, CA 90703

Case No. CC 2010-165

OAH No. 2013020987

Optometrist License No. 4626

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the State Board of Optometry, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on May 28, 2014

It is so ORDERED April 28, 2014

Alejandro M. Amedondo, AD

FOR THE STATE BOARD OF OPTOMETRY
DEPARTMENT OF CONSUMER AFFAIRS

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
Deputy Attorney General
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Attorneys for Complainant

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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. CC 2010-165

11 **THOMAS L. BLAKE**
12 11847 South Street
13 Cerritos, CA 90703

OAH No. 2013020987

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

14 **Optometrist License No. 4626**

15 Respondent.

16
17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in this
18 proceeding that the following matters are true:

19 **PARTIES**

20 1. Mona Maggio (Complainant) is the Executive Officer of the State Board of
21 Optometry. She brought this action solely in her official capacity and is represented in this matter
22 by Kamala D. Harris, Attorney General of the State of California, by Helene E. Swanson, Deputy
23 Attorney General.

24 2. Thomas L. Blake (Respondent) is represented in this proceeding by attorney Craig S.
25 Steinberg, whose address is:

26 Law Offices of Craig S. Steinberg

27 5737 Kanan Road, No. 540

28 Agoura Hills, CA 91301-1601.

1 3. On or about September 21, 1963, the State Board of Optometry issued Optometrist
2 License No. 4626 to Thomas L. Blake (Respondent). The Optometrist License was in full force
3 and effect at all times relevant to the charges brought in Accusation No. CC 2010-165 and will
4 expire on December 31, 2013, unless renewed.

5 JURISDICTION

6 4. Accusation No. CC 2010-165 was filed before the State Board of Optometry (Board),
7 Department of Consumer Affairs, and is currently pending against Respondent. The Accusation
8 and all other statutorily required documents were properly served on Respondent on September
9 28, 2012. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of
10 Accusation No. CC 2010-165 is attached as Exhibit A and incorporated by reference.

11 ADVISEMENT AND WAIVERS

12 5. Respondent has carefully read, fully discussed with counsel, and understands the
13 charges and allegations in Accusation No. CC 2010-165. Respondent also has carefully read,
14 fully discussed with counsel, and understands the effects of this Stipulated Surrender of License
15 and Order.

16 6. Respondent is fully aware of his legal rights in this matter, including the right to a
17 hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at
18 his own expense; the right to confront and cross-examine the witnesses against him; the right to
19 present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel
20 the attendance of witnesses and the production of documents; the right to reconsideration and
21 court review of an adverse decision; and all other rights accorded by the California
22 Administrative Procedure Act and other applicable laws.

23 7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and
24 every right set forth above.

25 CULPABILITY

26 8. Respondent understands and agrees that the charges and allegations in Accusation
27 No. CC 2010-165, if proven at a hearing, constitute cause for imposing discipline upon his
28 Optometrist License. For the purpose of resolving the Accusation without the expense and

1 uncertainty of further proceedings, Respondent agrees that, at a hearing, Complainant could
2 establish a factual basis for the charges in the Accusation, and that Respondent hereby gives up
3 his right to contest those charges.

4 9. Respondent understands that by signing this stipulation he enables the Board to issue
5 an order accepting the surrender of his Optometrist License without further process.

6 CONTINGENCY

7 10. This stipulation shall be subject to approval by the State Board of Optometry.
8 Respondent understands and agrees that counsel for Complainant and the staff of the State Board
9 of Optometry may communicate directly with the Board regarding this stipulation and surrender,
10 without notice to or participation by Respondent or his counsel. By signing the stipulation,
11 Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the
12 stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this
13 stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of
14 no force or effect, except for this paragraph, it shall be inadmissible in any legal action between
15 the parties, and the Board shall not be disqualified from further action by having considered this
16 matter.

17 11. The parties understand and agree that facsimile copies of this Stipulated Surrender of
18 License and Order, including facsimile signatures thereto, shall have the same force and effect as
19 the originals.

20 12. This Stipulated Surrender of License and Order is intended by the parties to be an
21 integrated writing representing the complete, final, and exclusive embodiment of their agreement.
22 It supersedes any and all prior or contemporaneous agreements, understandings, discussions,
23 negotiations, and commitments (written or oral). This Stipulated Surrender of License and Order
24 may not be altered, amended, modified, supplemented, or otherwise changed except by a writing
25 executed by an authorized representative of each of the parties.

26 13. In consideration of the foregoing admissions and stipulations, the parties agree that
27 the Board may, without further notice or formal proceeding, issue and enter the following Order:

28 //

ORDER

IT IS HEREBY ORDERED that Optometrist License No. 4626, issued to Respondent Thomas L. Blake, is surrendered and accepted by the State Board of Optometry.

1. The surrender of Respondent's Optometrist License and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the State Board of Optometry.

2. Respondent shall lose all rights and privileges as an Optometrist in California as of the effective date of the Board's Decision and Order.

3. Respondent shall cause to be delivered to the Board his pocket license and, if one was issued, his wall certificate on or before the effective date of the Decision and Order.

4. If Respondent ever files an application for licensure or a petition for reinstatement in the State of California, the Board shall treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations and procedures for reinstatement of a revoked license in effect at the time the petition is filed, and all of the charges and allegations contained in Accusation No. CC 2010-165 shall be deemed to be true, correct and admitted by Respondent when the Board determines whether to grant or deny the petition.

5. Respondent shall pay the agency its costs of investigation and enforcement in the amount of \$4,037.50, prior to issuance of a new or reinstated license.

6. If Respondent should ever apply or reapply for a new license or certification, or petition for reinstatement of a license, by any other health care licensing agency in the State of California, all of the charges and allegations contained in Accusation, No. CC 2010-165 shall be deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of Issues or any other proceeding seeking to deny or restrict licensure.

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DATED: 1-18-2014 Thomas L. Blake
THOMAS L. BLAKE
Respondent

DATED: 1-27-14


CRAIG S. STEINBERG
Attorney for Respondent

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the State Board of Optometry of the Department of Consumer Affairs.

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
GREGORY J. SALUTE
Supervising Deputy Attorney General



HELENE E. SWANSON
Deputy Attorney General
Attorneys for Complainant

Exhibit A

Accusation No. CC 2010-165

1 KAMALA D. HARRIS
Attorney General of California
2 GREGORY J. SALUTE
Supervising Deputy Attorney General
3 HELENE E. SWANSON
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8 **BEFORE THE**
STATE BOARD OF OPTOMETRY
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the First Amended Accusation
11 Against:

Case No. CC 2010-165

FIRST AMENDED ACCUSATION

12 **THOMAS L. BLAKE**
11847 South Street
13 Cerritos, CA 90703

14 **Optometrist License No. 4626**

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Mona Maggio (Complainant) brings this First Amended Accusation solely in her
20 official capacity as the Executive Officer of the State Board of Optometry, Department of
21 Consumer Affairs.

22 **License History**

23 2. On or about September 21, 1963, the State Board of Optometry issued Optometrist
24 License Number 4626 to Thomas L. Blake (Respondent). The Optometrist License expired on
25 December 31, 2013, and has not been renewed.

26 ///

27 ///

28 ///

JURISDICTION

3. This First Amended Accusation is brought before the State Board of Optometry (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 810 of the Code states in relevant part that:

(a) It shall constitute unprofessional conduct and grounds for disciplinary action, including suspension or revocation of a license or certificate, for a health care professional to do any of the following in connection with his or her professional activities:

(1) Knowingly present or cause to be presented any false or fraudulent claim for the payment of a loss under a contract of insurance.

(2) Knowingly prepare, make, or subscribe any writing, with intent to present or use the same, or to allow it to be presented or used in support of any false or fraudulent claim.

(b) It shall constitute cause for revocation or suspension of a license or certificate for a health care professional to engage in any conduct prohibited under Section 1871.4 of the Insurance Code or Section 549 or 550 of the Penal Code.

5. Section 3090 of the Code states:

Except as otherwise provided by law, the board may take action against all persons guilty of violating this chapter or any of the regulations adopted by the board. The board shall enforce and administer this article as to licenseholders, and the board shall have all the powers granted in this chapter for these purposes, including, but not limited to, investigating complaints from the public, other licensees, health care facilities, other licensing agencies, or any other source suggesting that an optometrist may be guilty of violating this chapter or any of the regulations adopted by the board.

6. Section 3105 of the Code provides that:

Altering or modifying the medical record of any person, with fraudulent intent, or creating any false medical record, with fraudulent intent, constitutes unprofessional conduct. In addition to any other disciplinary action, the State Board of Optometry may impose a civil penalty of five hundred dollars (\$500) for a violation of this section.

7. Section 3106 of the Code states that: "Knowingly making or signing any certificate or other document directly or indirectly related to the practice of optometry that falsely represents the existence or nonexistence of a state of facts constitutes unprofessional conduct."

8. Section 3110 of the Code states, in pertinent part, as follows:

The board may take action against any licensee who is charged with

unprofessional conduct, and may deny an application for a license if the applicant has committed unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

(a) Violating or attempting to violate, directly or indirectly assisting in or abetting the violation of, or conspiring to violate any provision of this chapter or any of the rules and regulations adopted by the board pursuant to this chapter.

(b) Gross negligence.

(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions.

* * *

(e) The commission of fraud, misrepresentation, or any act involving dishonesty or corruption, that is substantially related to the qualifications, functions, or duties of an optometrist.

(f) Any action or conduct that would have warranted the denial of a license.

* * *

(g) The failure to maintain adequate and accurate records relating to the provision of services to his or her patients. . .

9. Gross negligence is defined as "a lack of even scant care or an extreme departure from the ordinary standard of conduct." (See, e.g. *Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052 (physician's license suspended for gross negligence and incompetence).) Acts of gross negligence in failing to perform comprehensive eye examinations on patients has the potential to harm patients because abnormal results on required elements of an eye examination can be the first indication of serious, life-threatening diseases.

10. California Code of Regulations, Title 16, section 1510, provides as follows:

Inefficiency in the profession is indicated by the failure to use, or the lack of proficiency in the use of the ophthalmoscope, the retinoscope, the ophthalmometer (or keratometer), tonometer, biomicroscope, any one of the modern refracting instruments such as the phoropter, refractor, etc., or the phorometer-trial frame containing phoria and duction measuring elements or a multicelled trial frame, trial lenses, and prisms, in the conduct of an ocular examination; the failure to make and keep an accurate record of findings, lack of familiarity with, or neglect to use, a tangent screen or perimeter or campimeter; and the failure to make a careful record of the findings when the need of the information these instruments afford is definitely indicated.

11. Penal Code section 550 states, in relevant part:

(a) It is unlawful to do any of the following, or to aid, abet, solicit, or conspire with any person to do any of the following:

* * *

(6) Knowingly make or cause to be made any false or fraudulent claim for payment of a health care benefit.

(7) Knowingly submit a claim for a health care benefit that was not used by, or on behalf of, the claimant.

COST RECOVERY

12. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF FACTS

13. On or about March 7, 2006, Respondent entered into a Vision Service Provider (VSP) Member Doctor Agreement with VSP (Agreement), under which he was permitted to provide services to patients with VSP coverage and to bill VSP for payment for his services, as provided for by the agreement. Under Paragraph 6 of page four of the Agreement, Respondent agreed to "[t]o perform each of the procedures and tests prescribed in the VSP Provider Reference Manual, as well as any other tests that are, in the [doctor's] professional judgment, indicated."

14. Respondent further agreed in the Agreement under Paragraph 6 "... to certify the accuracy, completeness, and truthfulness of the data contained in all claims and information submitted to VSP." Furthermore, under Paragraph 12 of the Agreement, Respondent agreed to, upon request, furnish case records to VSP for any enrollee(s) for whom claims were submitted to VSP.

15. On or about May 28, 2009, VSP conducted an unannounced audit through VSP's Senior Fraud Investigator (VSP Investigator), J.M.,¹ at Respondent's office of 63 of Respondent's patient records, because his reimbursement rate for contact lenses was very high in comparison to other optometrists. Initially, Respondent tried to get VSP Investigator to leave his office, by telling her they were having a staff meeting. When the VSP Investigator told Respondent she

¹ The initials are used to protect the privacy of individuals referred to in this accusation, but their identities are known to Respondent and Complainant has produced documents responsive to Respondent's discovery request which disclose their identities.

1 would wait, Respondent met with his staff for several minutes. The investigator for VSP
2 requested a total of 63 patient records for a one-year period of time, from January 2008 through
3 December 2008.

4 16. During the audit at Respondent's office, the staff pulled the requested patient records,
5 they would hand the records to another staff member named K.B., who is alleged on information
6 and belief to be Respondent's daughter, who would then white-out information and write in
7 information to match what had previously been billed to VSP. The VSP Investigator advised the
8 staff person three times to stop changing the records. After the third time of being advised to stop
9 whitening out information in the patient records, the staff member stopped providing the VSP
10 Investigator with the requested records. Consequently, out of the 63 patient records which were
11 requested by the VSP Investigator, 12 patient records were not provided at all during the audit by
12 Respondent's staff members.

13 17. Many of the records which VSP's Investigator reviewed contained discrepancies,
14 including billing for contact lens materials when the patients received glasses, and billing for
15 examinations without supporting documentation. Of the 51 records obtained, VSP determined
16 that at least 13 showed billing for examinations without documentation. There was no
17 documentation of the contact lens materials received, even though the bills requested payment for
18 contact lenses.

19 18. In a Notice of Adverse Action and Restitution Demand from VSP to Respondent
20 dated June 17, 2009, VSP notified Respondent that it was terminating its contract with him,
21 effective at the close of business on September 22, 2009. VSP also demanded that Respondent
22 repay improper claims he had previously submitted to VSP, in the amount of \$44,568, plus the
23 cost of the audit, in the amount of \$3,117, for a total of \$47,685. On August 21, 2009, a hearing
24 was held before VSP's Quality Care Committee Hearing Panel, which concluded that VSP
25 produced evidence in support of its noticed action which Respondent had not adequately refuted,
26 and which affirmed the VSP Optometry Director's decision to terminate VSP's Member Doctor
27 Agreement with Respondent. Respondent repaid at least \$44,588.17 of the \$47,685 restitution
28 claim requested by VSP.

1 19. Complainant retained an independent expert in optometry to review Respondent's
2 patient records which were provided to VSP during their audit and determine if Respondent's
3 examinations of his patients and record-keeping met the standard of care. A comprehensive eye
4 examination requires an optometrist to perform and document several elements, including but not
5 limited to the following:

- 6 • Test the visual acuity (VA) of each eye, which are the most common tests used to evaluate
7 eyesight.²
- 8 • Test the visual field (VF), also known as a perimetry test, to test the loss of peripheral
9 vision, which is often an early sign of glaucoma.
- 10 • Test the ocular motility (EOM), which screens for defects in eye movements and alignment.
- 11 • Test the pupillary function (PUPILS), which includes inspecting the pupils for equal size,
12 regular shape, reactivity to light, and direct and consensual accommodation.
- 13 • Slit-lamp examination or biomicroscopy (SLE)³
- 14 • Measure the intraocular pressure (IOP), which can be measured by Tonometry devices.⁴
- 15 • Perform an ophthalmoscopic examination (OE), which allows a doctor to see inside the back
16 of the eye (called the fundus) and other structures using a magnifying instrument
17 (ophthalmoscope) and a light source.

18 20. The independent expert reviewed the following 33 patient records; for which
19 Respondent billed VSP for comprehensive examinations for those patients, but the available
20 records showed the following elements of the examination were documented (Y) and not
21 documented (N), as follows:

22 ///

23 _____
24 ² These tests measure the eye's ability to see details at near and far distances and usually
involve reading letters or looking at symbols of different sizes on an eye chart.

25 ³ A slit lamp exam is also called biomicroscopy and allows the doctor to see areas at the
26 front of the eye, including the eyelids, conjunctiva, iris, lens, sclera, and cornea. The retina and
optic nerve can also be seen. Using this exam, the optometrist can microscopically examine the
eye for any abnormalities or problems.

27 ⁴ The eye can be thought of as an enclosed compartment through which there is a constant
28 circulation of fluid that maintains its shape and internal pressure. Tonometry is a method of
measuring this pressure using various instruments.

VSP Claim No.	Patient ID ⁵	Date of Service	VA	VF	EOM	PUPILS	SLE	IOP	OE
(1) 89654350	A.	6/06/08	Y	Y	Y	Y	Y	Y	Y
(2) 93661652	B.	8/16/08	Y	N	N	N	N	Y	Y
(3) 84214703	C.	2/27/08	Y	N	N	N	N	N	Y
(4) 84269958	D.	2/27/08	Y	N	N	N	N	N	Y
(5) 95255088	E.	9/16/08	Y	N	N	N	N	Y	Y
(6) 94660306	F.	9/18/08	N	N	N	N	N	Y	N
(7) 84016304	G.	2/23/08	Y	N	N	N	N	N	Y
(8) 84347926	H.	2/29/08	Y	N	N	N	N	N	Y
(9) 98197006	I.	11/11/08	Y	N	N	N	N	Y	Y
(10) 98191452	J.	11/11/08	Y	N	N	N	N	N	Y
(11) 86034878	K.	3/29/08	Y	N	N	N	N	Y	N
(12) 88449257	L.	5/13/08	N	N	N	N	N	Y	N
(13) 90439115	M.	6/21/08	N	N	N	N	N	Y	N
(14) 81333762	N.	1/19/08	Y	N	N	N	N	Y	Y
(15) 85258350	O.	3/15/08	N	N	N	N	N	Y	N
(16) 81854390	P.	1/17/08	Y	N	N	N	N	N	N
(17) 87964997	Q.	5/03/08	Y	N	N	N	N	Y	Y
(18) 84442472	R.	3/01/08	Y	Y	Y	Y	Y	Y	Y
(19) 89248006	S.	5/30/08	Y	Y	Y	Y	Y	Y	Y
(20) 91566256	T.	7/12/08	Y	N	N	N	N	Y	Y
(21) 98408113	U.	11/14/08	Y	N	N	N	N	Y	N

⁵ To protect the patient's privacy, they will each be identified only by an assigned letter identification. The names of the patients will be provided to Respondent pursuant to a timely request for discovery.

1	(22) 90015577	V.	6/12/08	Y	N	N	N	N	N	N
2	(23) 94386507	W.	8/28/08	Y	Y	Y	Y	Y	Y	Y
3	(24) 91586576	X.	7/12/08	Y	N	N	N	N	Y	N
4	(25) 99771511	Y.	9/13/08	Y	N	N	N	N	Y	N
5	(26) 87072627	Z.	4/16/08	Y	Y	N	N	N	N	Y
6	(27) 81240337	AA.	1/09/08	Y	Y	N	N	N	Y	Y
7	(28) 96975606	BB.	10/17/08	Y	N	N	N	N	N	Y
8	(29) 92602533	CC.	7/30/08	Y	Y	Y	Y	Y	Y	Y
9	(30) 93827170	DD.	8/20/08	Y	N	N	N	N	N	Y
10	(31) 97269213	EE.	10/31/08	N	N	N	N	N	Y	N
11	(32) 90188940	FF.	6/17/08	Y	N	N	N	N	Y	N
12	(33) 89189906	GG.	5/29/08	Y	N	N	N	N	Y	N

21. Based upon his review, the Board's independent optometry expert determined that there was poor or inadequate documentation in the majority of records, only five of the 33 patient records prepared by Respondent had somewhat complete documentation that a complete, comprehensive eye examination was performed, as billed, and that 27 of the 33 patient records sampled have no documentation of: (1) testing the visual field; (2) testing the ocular motility; (3) testing the pupillary function; and (4) performing the slit-lamp biomicroscopy.

FIRST CAUSE FOR DISCIPLINE

(Unprofessional Conduct-Insurance Fraud)

22. Respondent is subject to disciplinary action under Sections 810, subdivisions (a)(1) and (a)(2), in conjunction with Section 3110, subdivisions (a), (e) and (f), in that between January 2008 and December 2008, Respondent fraudulently submitted bills to VSP, as set forth in Paragraphs 13 through 21 above, which are incorporated by reference as though set forth in full. Respondent is responsible for providing adequate supervision and training to his employees and for the bills which his office submits to VSP, and contractually agreed "... to certify the accuracy, completeness, and truthfulness of the data contained in all claims and information

1 submitted to VSP", as set forth above in Paragraph 14. Respondent knowingly presented false
2 and fraudulent claims to VSP for payment and/or allowed his employee(s) to presented false
3 claims, including but not limited to submitting false bills to VSP for contact lens materials that
4 were not documented as necessary for his patients, and which were not provided to those patients.
5 VSP determined that a review of Respondent's billing practices showed a pattern of behavior of
6 providing VSP with false and/or misleading information, resulting in overpayment to Respondent
7 by VSP for services and/or materials. This constitutes unprofessional conduct within the meaning
8 of Sections 810 (a)(1) and 810(a)(2) and provides grounds for disciplinary action under Section
9 3110, subdivisions (a), (e) and (f).

10 SECOND CAUSE FOR DISCIPLINE

11 (Unprofessional Conduct-Alteration of Medical Records)

12 23. Respondent is subject to disciplinary action under Section 3105, in conjunction with
13 Section 3110, subdivisions (a) and (e), in that Respondent engaged in unprofessional conduct, as
14 follows:

15 a. Incorporating by reference the allegations in Paragraphs 13 through 22 above,
16 as though set forth fully herein, Respondent's conduct, in fraudulently submitting bills to VSP for
17 compensation he was not entitled to, including but not limited to billing for providing patients
18 with contact lenses, which were compensated at a higher rate than glasses, and could be billed for
19 more frequently than glasses, when the patient records reveal that the patients did not receive
20 contact lens materials.

21 b. Respondent elected to operate his optometry business through his employees,
22 and is subject to discipline for the acts of his employees, who falsified, altered and/or changed
23 information in two to three patient records in order to match the billing records, in front of the
24 VSP investigator and during the May 28, 2009 VSP audit, as set forth above in Paragraph 16.

25 THIRD CAUSE FOR DISCIPLINE

26 (Unprofessional Conduct - False Representation of Facts)

27 24. Respondent is subject to disciplinary action under Section 3106, in conjunction with
28 Section 3110, subdivision (e), in that Respondent fraudulently submitted bills to VSP.

1 25. Incorporating by reference the allegations in Paragraphs 13 through 23, Respondent's
2 conduct, in fraudulently submitting bills to VSP, necessarily involved knowingly creating
3 paperwork directly related to his practice of optometry that falsely represented facts regarding
4 several of his patients. To the extent that Respondent elected to operate his business through his
5 employees, he was responsible for providing them with adequate training and supervising,
6 including with respect to any employee who submitted electronic billing claims to VSP for
7 services which Respondent provided to his patients and, under his Agreement with VSP,
8 Respondent contractually agreed to certify the accuracy, completeness and truthfulness of all
9 claims and information submitted to VSP for payment. Respondent is therefore subject to
10 discipline for any false claims which were submitted to VSP, whether or not he directly sent the
11 claims electronically, or indirectly submitted them to VSP through his employee(s). The
12 submission of claims which contained false information to VSP by Respondent constitutes
13 unprofessional conduct within the meaning of Section 3106, and provides grounds for
14 disciplinary action under Section 3110, subdivision (e).

15 **FOURTH CAUSE FOR DISCIPLINE**

16 **(Gross Negligence)**

17 26. Respondent is subject to disciplinary action under Section 3110, subdivisions (b) and
18 (q), in that Respondent provided grossly negligent care and treatment to his patients because he
19 failed to provide even scant care and engaged in an extreme departure from the ordinary standard
20 of care for optometrists, as referenced in Paragraphs 13 through 25, above, and incorporated fully
21 herein, and as follows:

22 a. Only five of the 33 patient records prepared by Respondent and reviewed by the
23 Board's independent expert had somewhat complete documentation that a complete,
24 comprehensive eye examination was performed, as billed.

25 b. 28 of the 33 examination records have no documentation of (1) testing the
26 visual field; (2) the ocular motility; (3) the pupillary function; and (4) performing the slit lamp
27 biomicroscopy.

28 ///

1 c. Respondent failed to properly record visual acuity measurements in five of the
2 33 patient records and/or properly record those measurements, in Record Nos. 6, 12, 13, 15 and
3 31.

4 d. Respondent failed to test the visual field in 26 of 33 patient records and/or
5 record that he had tested the visual field, in Record Nos. 2-17, 20-22, 24-25, 28, and 30-33.

6 e. Respondent failed to test the ocular motility and/or record that he had tested the
7 ocular motility in 28 of 33 patient records, in Record Nos. 2-17, 20-22, 24-28 and 30-33.

8 f. Respondent failed to test the pupillary function and/or record that he had tested
9 the pupillary function in 28 of 33 patient records, in Record Nos. 2-17, 20-22, 24-28 and 30-33.

10 g. Respondent failed to perform a slit lamp examination and/or record that he had
11 performed a slit lamp examination in 28 of 33 patient records, in Record Nos. 2-17, 20-22, 24-28
12 and 30-33.

13 h. Respondent failed to measure the intraocular pressure and/or record that he had
14 measured the intraocular pressure in 10 of 33 patient records, in Record Nos. 3-4, 7-8, 10, 16, 22,
15 26, 28 and 30.

16 i. Respondent failed to perform an ophthalmoscopic examination and/or record that
17 he performed an ophthalmoscopic examination in 13 of 33 patient records, in Record Nos. 6, 11-
18 13, 15-16, 21-22, 24-25 and 31-33.

19 **FIFTH CAUSE FOR DISCIPLINE**

20 **(Repeated Negligent Acts)**

21 27. Respondent is subject to disciplinary action under Section 3110, subdivisions (c) and
22 (q), in that Respondent engaged in repeated negligent acts, including record keeping violations, as
23 set forth in Paragraphs 13 through 26, inclusive, which are incorporated herein by reference.

24 **SIXTH CAUSE FOR DISCIPLINE**

25 **(Failure to Maintain Adequate and Accurate Records)**

26 28. Respondent is subject to disciplinary action under Section 3110, subdivision (q), in
27 that Respondent failed to maintain adequate and accurate patient records relating to the provisions
28

1 of services to his patients, which he billed to VSP as comprehensive eye examinations, as more
2 fully set forth in Paragraphs 13 to 27, above.

3 SEVENTH CAUSE FOR DISCIPLINE

4 (Violation of Regulations)

5 29. Respondent is subject to disciplinary action under Section 3110, subdivision (a), in
6 that Respondent demonstrated professional inefficiency in violation of California Code of
7 Regulations, Title 16, section 1510, as more fully set forth in Paragraphs 13 through 30, above.

8 PRAYER

9 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
10 and that following the hearing, the State Board of Optometry issue a decision:

11 1. Revoking or suspending Optometrist License Number 4626, issued to Thomas L.
12 Blake;

13 2. Ordering Thomas L. Blake to pay the State Board of Optometry the reasonable costs
14 of the investigation and enforcement of this case, pursuant to Business and Professions Code
15 section 125.3; and

16 3. Taking such other and further action as deemed necessary and proper.
17

18 DATED: January 15, 2014

19 
20 MONA MAGGIO
21 Executive Officer
22 State Board of Optometry
23 Department of Consumer Affairs
24 State of California
25 Complainant

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